

SPECIAL NEEDS TRUSTS

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What is a Special Needs Trust (SNT)?

1. The beneficiary has special needs
 - Receives, or in the future may be eligible for, means tested benefits (e.g. SSI, Medicaid)
2. A discretionary trust
3. Spendthrift Clause
4. Assets/income do not count as the beneficiary's for purposes of determining his or her eligibility for means-tested benefits.

Types of Special Needs Trusts

First Party a/k/a Self-Settled

- Stand Alone
- Pooled SNT

Third Party

- Stand Alone
- Pooled SNT

FIRST PARTY SPECIAL NEEDS TRUST

First Party SNT allows an individual who owns his or her assets to preserve those assets AND preserve eligibility for means-tested public benefits.

Funds in this trust *belong* to the person with disabilities:

- Personal injury/Medical malpractice proceeds
- Inheritance
- Social Security lump sum
- "Over scale" funds

First Party (self-settled) Stand Alone SNT:

- Established by the beneficiary, his parent, grandparent, legal guardian or the court.
- The beneficiary must be under 65 and a person with disabilities when the Trust is established.
- Must be for the sole benefit of the beneficiary
- **State Payback:** on the death of the beneficiary, the remaining assets of the trust must first be used to reimburse Medicaid for amounts paid to the beneficiary.
- The Trust Agreement must meet the requirements established by Medicaid and Social Security. Attorney General Review.

First Party (self-settled) Pooled SNT

- Must be established and operated by a non-profit corporation.

First Maryland Disability Trust

Shared Horizons

ARC of No. Virginia

- There is a **Master Trust** with professional Trustee, **sub-accounts** are set up for each beneficiary
- Funds are **pooled** for investment purposes
- Professional Management – *no customized investment options*
- Required minimum principal amount is low.
- **On death of beneficiary**, there are options to retain the remaining funds in Trust of charitable purposes, or use the funds to repay Medicaid and distribute excess to remainder beneficiaries, or some combination.

Third Party Stand Alone Special Needs SNT

- Established by anyone other than the beneficiary
- The beneficiary **can be any age**
- The assets are never owned by the beneficiary
- There can be multiple beneficiaries of the same Trust
- But.... must be pure discretionary trust as to the beneficiary with disabilities
- Spendthrift Clause – creditor Protection
- Can be funded by multiple persons once established
- NO PAYBACK: No requirement to repay Medicaid – ever!

Third Party Pooled SNT

- Established by anyone other than beneficiary
- Can be funded by multiple persons
- No payback to Medicaid – the Grantor chooses who receives remaining funds at beneficiary's death
- Most Pooled Trusts have either no minimum deposit or a small minimum
- Corporate or professional trustee
- *No customized investment options*

TYPES OF SPECIAL NEEDS TRUSTS

| | Source of Funds | Who Establishes | Distribution Upon Death |
|--|---|---|--|
| Third Party Individual and Pooled Trusts | Anyone except Beneficiary | Anyone except Beneficiary | Grantor's wishes |
| First Party (d)(4)(A) | Beneficiary's funds before age 65 | Beneficiary, Parent, Grandparent, Guardian, Court | Medicaid Payback; then remainder beneficiaries |
| First Party Pooled Trust (d)(4)(c) | Beneficiary's funds, can be over age 65 | Beneficiary, Parent, Grandparent, Guardian, Court | Non-profit Trustee, or Medicaid Payback; then remainder beneficiaries, or combination. |

BEFORE MAKING EXPENDITURES FROM SNT....

- What benefits is the beneficiary receiving?
- Is the expenditure appropriate for the beneficiary and consistent with trust provisions and policies?
- Is the expenditure duplicative - covered with other benefits/resources?
- Can the Trustee afford the expenditure and reserve enough for the future needs of beneficiary? Is it reasonable?
- How does the expenditure affect beneficiary's government benefits? Solely for benefit of beneficiary?
- Will the expenditure be considered "in-kind support and maintenance" (ISM)?
- AVOID payments directly to the beneficiary. Pay provider for the services or goods.

What a SNT can pay for:

| EXAMPLES INCLUDE: | |
|------------------------------------|------------------------------|
| Automobile and maintenance | Clothing |
| Computer | Health club membership |
| Fitness equipment | Laundry services |
| Music lessons or instruments | Personal care items |
| Pets and pet supplies | Public transportation |
| Telephones | Television and cable service |
| Vacation travel and accommodations | Sporting goods and events |

Beneficiary is receiving SSI – understanding ISM

- “ISM” = “In-kind support and maintenance”
- ISM deals specifically with payments for “food and shelter”

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- SSI is a benefit program available to disabled individuals with limited income and few assets. SSI often opens the door to other benefits, e.g. Medicaid.
- SSI – Maximum payment for single individual \$735.

Theory: pays for food and shelter

Third party ISM payments (food and shelter) Reduce SSI monthly benefit

- This includes ISM payments from SNT
- Calculating the effect on maximum monthly benefit for individual of \$735:
Payments for food & shelter reduce SSI benefit by the LESSOR of:

The value of the
food & shelter payments

OR

1/3rd of the SSI benefit
plus \$20

Example: ISM of \$1,000 a month results in: $(1/3^{\text{rd}}$ of \$735 = \$245) + \$20 = \$265

In-Kind Support and Maintenance = ISM = Food & Shelter

- Food
- Mortgage (including property insurance required by mortgage holder)
- Real Property Taxes
- Rent
- Heating Fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

Choosing the Trustee

- Family vs. Professional vs. Attorney
 - Complexity – SSI rules, tax reporting, investments
 - Amount under management
 - Family relationship
 - Fees
 - Conflict of interest
 - Knowledge and experience
 - Ability v. Willingness

Trust Protector

Trust Committee

TRUSTEE RESPONSIBILITIES

- Works with Financial Advisor to manage and invest the assets
- Determines life plan as to amount needed for SNT
- Makes decisions how to use the assets for the beneficiary
- Balances relationship with beneficiary, family and others
- Distributes funds on behalf of the beneficiary
- Balances needs, benefits and outside resources
- Keeps books, prepares accountings
- Retains accountant to prepare and file tax returns
- Hires advocates and care managers
- Personal liability: negligent or acting in bad faith